

2.1.17

Commission's Secretary
 Marlene H. Dortch
 Office of the Secretary
 Federal Communications Commission
 445 12th Street, SW
 Room TW-A325
 Washington, DC 20554
 Deena Shetler: deena.shetler@fcc.gov
 FCC Contractor: fcc@bcpiweb.com
 Re: WC Docket No. 06-210
 CCB/CPD 96-20

MOTION TO REISSUE, at the BUREAU LEVEL,

THE FCC's JANUARY 12th 2007 ORDER and MAKE IT EXPLICIT

The FCC is Holding up the FCC Ethics Staff, the State Ethics Staffs of DC and NJ and DC Circuit Courts State Attorney Ethics Staffs

Petitioners: One Stop Financial, Inc., Winback & Conserve Program Inc., 800 Discounts, Inc., and Group Discounts, Inc. justify its request for this motion based upon the following and the case evidence under 06-210 case file.

1) The FCC clearly understands AT&T counsels are involved in an intentional fraud. The FCC has already referred AT&T counsel's intentional fraud to the FCC ethics department. The fact that the FCC case manager Deena Shetler got approval to send the case to the FCC Ethics staff was in and of itself an FCC determination that the Traffic Only transfer case was MOOT. The FCC does **not** refer a pending controversy to the FCC ethics staff. This further confirms the traffic only transfer controversy regarding which obligations transfer on a traffic only transfer is moot. It further confirms what the January 12th 2007 FCC Order was trying to convey. The FCC Jan 12th 2007 Order noted Judge Bassler's 2006 referral on the 2006 created controversy---- on which obligations transfer on a traffic only transfer under section 2.1.8---- does not expand the scope of the original 1995 referral—which was over fraudulent use.

2) The FCC ethics department has advised petitioners that it is open to collaborate with State Attorney Ethics for DC and NJ and the DC Circuit Court. The FCC ethics staffs has stated that there are several AT&T counsels that are outside its jurisdiction because these attorneys do not practice before the FCC. The FCC Ethics staff is open to coordinating its efforts in investigating

AT&T counsels as only the State Ethics Staffs have jurisdiction over those counsels that do not practice before the FCC.

3) The attorneys outside the FCC are primarily counsels that were involved in the case from 1995 through 2005 under the sole 2.2.4 controversy. As per the FCC 2003 Order AT&T's sole defense in 1995 and thus the controversy in the case was under section 2.2.4 of the FCC tariff called fraudulent use. AT&T counsels original position was that under its tariff the revenue and time commitments do not transfer when only end-user location traffic is being transferred and not the entire plan. AT&T's assertion was that petitioners were not going to meet its revenue commitment on the non-transferred discount plan if substantial locations were transferred to a different AT&T customer. Judge Politan in his March 1996 Decision understood petitioner's plans were immune from such revenue commitments as the plans could be restructured and thus ordered the injunction against AT&T to transfer the locations from 28% to 66% discount.

4) The DC and NJ State Ethics staffs have stated that they cannot begin its investigation and collaborate with the FCC Ethics staff even when the issue is moot because it is still before the FCC. The FCC's Deena Shetler who was the case manager that referred the AT&T fraud to the FCC ethics staff -----and wrote the FCC January 12th 2007 Order ----has also stated that even when an issue is moot it is still substantive. The FBI Washington DC HQ office read the case file and directed petitioners to its Newark FBI office.

5) The FCC Ethics staffs will not proceed with the ethics investigation until the State Ethics staffs are involved and can investigate the counsels that are outside the FCC's jurisdiction---and the State Ethics staffs will not assist until the FCC clears out the traffic only case which is moot. So, the FCC is holding up the State Ethics staffs and the AT&T fraud continues. The FCC's refusal to make explicit the Jan 12th 2007 FCC Order at the bureau level from whence it came is aiding AT&T's continued fraud. The FCC's January 12th 2007 Order states that under the Administrative Procedures Act the FCC's goal is to assist the district court. How is the FCC assisting the District Court when the District Court doesn't understand the FCC Order? The mere fact that Judge Wigenton didn't even reference the FCC Order is conclusive her Court is totally confused by it! If the Order explicitly said Judge Bassler's referral on which obligations transfer under 2.1.8 is MOOT, the District Court would understand it. Judge Wigenton does not understand what "does not expand the scope means." The FCC's belief that Judge Wigenton is incompetent and should understand the FCC's 2007 Order----- and it's not the FCC's problem that her Court can't understand the only controversy is moot----- is not the position the FCC should be taking!

6) The FCC is in a predicament because the traffic only transfer case has already been decided against AT&T. AT&T's only defense was fraudulent use under 2.2.4 and the FCC's 2003

Decision denied that defense due to AT&T's illegal remedy of permanently denying the traffic only transfer instead of the tariffed remedy of only temporarily suspending service.

7) In 2006, after the DC Circuit Decision, AT&T understood that it lost its only defense.

The FCC 2003 Decision:

“Because AT&T did not act in accordance with the **“fraudulent use”** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon **“any other provisions of its tariff”** to justify its conduct.” (FCC 2003 Order Pg.10 para 13)

The DC Circuit Decision did not find fault with the FCC's 2003 decision to strike down AT&T's sole defense of fraudulent use under section 2.2.4. The DC Circuit Court also determined that the FCC was incorrect in its view that section 2.1.8 did allow traffic only to transfer without the plan. Although the FCC only believed that section 3.3.1Q bullet 4 allowed traffic only transfers, the DC Circuit Decision explicitly stated that 2.1.8 also allowed traffic only transfers, which plaintiffs ordered. The FCC's only controversy to resolve from 1995 was whether AT&T could use section 2.2.4 to prohibit traffic only from transferring under the tariff and the FCC's ruling against AT&T's only defense was not remanded by the DC Circuit Decision:

The DC Circuit Decision Plaintiffs Initial Brief stated on pg.8:

“Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass transfers of traffic alone.”

DC Circuit Decision stated on pg.10:

“As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and not just transfers of entire plans.”

DC Circuit Decision pg 11.

“In sum, the FCC clearly erred in ruling that Section 2.1.8 of AT&T Tariff FCC No.2 does not apply to a transfer of "traffic."

8) After the DC Circuit AT&T created its new defense in 2006 claiming for the first time that the reason it denied the 1995 traffic only transfer was that on a traffic only, non-plan transfer the

revenue and time commitments must also transfer. This of course was a complete change in AT&T counsels position as under AT&T's original defense of fraudulent use, there was no controversy between the parties----- as the District Court, AT&T and petitioners all agreed that the non-transferred plans revenue and time commitment do not transfer. AT&T of course could have never asserted a 2.2.4 defense unless it was AT&T's original position that the non-transferred plans revenue and time commitment do **not** transfer on a traffic only transfer.

9) After the 2005 DC Circuit Decision in Judge Bassler's NJFDC in 2005 AT&T claimed that the DC Circuit Decision was a remand--- but of course it was not. The DC Circuit Court's Legal Director Martha Tomich stated that it is a remand when it says it's a remand. Martha Tomich stated and the DC Circuit Decision states the DC Circuit Court by law **can only review what the FCC was originally asked to interpret**. The FCC was asked in 1995 to determine whether AT&T's 2.2.4 defense could prohibit a traffic only transfer. The DC Circuit's speculation about which obligations transfer under section 2.1.8 was not only outside its review, but Judge John Roberts not only **disregarded all the evidence in the case**---Judge Roberts simply misread the tariff language---and was thus totally confused on an issue of which obligations transfer under 2.1.8---- that **was not under his review!** On top of that Judge Roberts during Oral argument was explicitly advised by AT&T's counsel David Carpenter that all the obligations do not transfer on a traffic only transfer and still Judge Roberts decided to speculate on an issue outside the controversy and thus outside his review. The only controversy in 1995 was section 2.2.4 and by March 1996 NJFDC Judge Politan issued an injunction and determined that the 2.2.4 controversy was not properly substantiated by AT&T. Judge Politan determined in March 1996 that the plans were all pre-June 17th 1994 ordered and thus were immune from AT&T's speculation under section 2.2.4 that petitioners could not meet its revenue commitments.

10) In 2006 in Judge Bassler's Court AT&T---after seeing John Roberts confusion on which obligations transfer ---decided to create a brand-new controversy---- that had never been heard before. Incredibly AT&T claimed that the reason why it denied the traffic only transfer in 1995 was that under a traffic only transfer AT&T's tariff mandated that the revenue and time commitment **must transfer**. AT&T in 1995 initially agreed with petitioners and stated that these two obligations **do not** transfer under 2.1.8. To assert AT&T sole defense under the 2.2.4 in 1995 AT&T had to concede the tariff mandated that the **former** customer must retain its revenue and time commitments. AT&T created a brand-new controversy post DC Circuit Court that the revenue and time commitments of the non-transferred plans **must transfer** under 2.1.8.

11) Despite the DC Circuit Decision not being a remand and AT&T's only 2.2.4 defense of fraudulent use being denied, and AT&T having zero evidence to support the newly created fraud---Judge Bassler made a critical error by issuing a second primary jurisdiction referral in 2006--- raising the brand-new controversy that was outside the scope of the 1995 controversy

under 2.2.4. Incredibly AT&T claimed it denied the **1995** traffic only transfer based upon a new controversy it created in **2006**. There is absolutely nowhere in the record from 1995 through 2005 in which AT&T's original counsels ever asserted there was a controversy regarding which obligations transfer under section 2.1.8., on a traffic-only transfer ----as all parties agreed the revenue and time commitment do not transfer. Again, in 1995 AT&T had to take the position that under the tariff the plans revenue and time commitment do not transfer when arguing its sole defense to address the 2.2.4 controversy regarding petitioners being able to meet shortfall commitments.

12) Judge Bassler's primary jurisdiction referral was filed in December 2006. The FCC on January 12th 2007 released its Order and recognized that the Judge Bassler referral on which obligations transferred under section 2.1.8 **had nothing to do with the original primary jurisdiction controversy referral from 1995**. The FCC's January 12th 2007 Order correctly determined Judge Bassler's referral on 2.1.8 was outside the scope of the original controversy: See FCC Order Page 2 para 3 into page 3.

“The Districts Courts June 2006 Order does not expand the scope of the original referral.”

The above sentence FCC's January 2007 Order was footnoted and explained that any other questions must be dealt with by the NJFDC:

¹² Moreover, in the *Order on Primary Jurisdiction Referral*, the Commission declined to rule on factual disputes between the parties, finding resolution of such facts was unnecessary on the primary jurisdiction referral, which requested an interpretation of section 2.1.8. *Id.*, 18 FCC Rcd at 21825, para. 18 & n.87. The Commission concluded that any disputed facts should be addressed by the district court, which -- as petitioners themselves previously argued -- was the original forum before which an evidentiary record had been compiled. *Id.* at n.87. These decisions were not disturbed by the Court of Appeals.

FCC January 12th 2007 Order, fn 12

“These Decisions were not disturbed by the Court of Appeals.”

The FCC is advising the district court that not only is the Bassler referral outside the scope of the case but other issues were not for the FCC to decide ---they were for the NJFDC to decide. For example, if the case was not moot the NJFDC must deal with the issues such as discrimination which is a fact-based issue.

13) The original referral controversy was over section 2.2.4. There was no controversy in 1995 that AT&T was denying the transfer based upon a position that revenue and time commitments **must transfer** under section 2.1.8. All parties agreed in 1995 that revenue and time commitment do not transfer on a traffic only transfer under 2.1.8. The controversy in 1995 was simple: Could AT&T prohibit a 2.1.8 or a 3.3.1Q bullet 4 traffic only transfer under its sole defense under section 2.2.4.

14) AT&T had no defense under section 2.1.8 in 1995. Its sole defense to prohibit a 2.1.8 traffic only transfer was based upon the 2.2.4 fraudulent use provision of its tariff. AT&T in 1995 claimed section 2.2.4 prohibited a 2.1.8 transfer. Judge Politan by March 1996 stated that AT&T 2.2.4 defense had no merit. The FCC in 2003 denied that sole defense without addressing the merit---ruling that even if it had merit AT&T still could not rely upon it due to the illegal remedy used. The FCC never got to yet another issue of whether AT&T could use 2.2.4 to stop a 2.1.8 traffic only transfer---- as by law section 2.2.8 would have needed to explicitly state: Section 2.1.8 can only be effectuated if section 2.2.4 is first complied with. **Under the FCC law any rate or regulation must be explicitly referred to.**

15) If you are hearing about this fraud for the first time you must be wondering---Wait a minute – How did AT&T counsel actually expect to scam Judge Bassler in 2006 and continue with its fraud today on the new Judge Wigenton with this newfangled 2006 assertion that revenue and time commitments **MUST TRANSFER** transfer on a traffic only transfer---- **when all the evidence shows these commitments don't transfer!** Wouldn't a Judge ask AT&T counsel “How come all the original AT&T counsels 1995-2005 claimed that AT&T never transfers those plan commitments” and AT&T's former counsel Fred Whitmer in 1995 told Judge Politan that AT&T has done **thousands of traffic only transfers** under section 2.1.8. Yet AT&T presents zero evidence of its newly created post DC Circuit Court assertion that revenue and time commitments must transfer. AT&T still does traffic only transfer today and of course revenue and time commitments still do not transfer---but the fraud continues. Imagine a fraud so detectable that a Judge can tell a clerk to simply call up AT&T and ask a sales rep if all obligations transfer!

16) You may be asking yourself---How in the world is AT&T counsels going to convince NJFDC Judges that ----not only should it be able to create a brand-new controversy in **2006** to justify why it did not do the traffic only transfer in January **1995** ----but how is AT&T counsel are going to **pull off the fraud without any evidence of its 2006> position!** Not only did our Current Supreme Court Chief Justice John Roberts disregard the evidence ----NJFDC Judges Bassler and Judge Wigenton never even asked AT&T counsels why it has zero evidence to support its 2006 created assertion; despite petitioners showing the Court actual evidence that the obligations do not transfer—even though it is a moot controversy in any event. Judge Bassler obviously made an error in referring a brand-new controversy to the FCC in 2006 regarding which obligations transfer---and the FCC's 2007 Jan 12th Order did explicitly find that Judge Bassler's referral “did not expand the scope of the original 1995 referral.” Judge Bassler did state during oral argument that there was a discrimination issue in the case because the record evidence obviously shows that all other AT&T customers were being allowed traffic only transfers under 2.1.8 without the revenue and time commitments transferring-- but not petitioners-- and plan obligations did not transfer. AT&T's only defense in 1995 was under 2.2.4 **due to the percentage of accounts that were being transferred** by petitioners under 2.1.8 **not due to which obligations get transferred** under 2.1.8. Major difference.

17) NJFDC Judge Bassler retires and NJFDC Judge Wigenton takes the case. Judge Wigenton disregards the 2003 FCC Order stating AT&T had 1 defense under 2.2.4., and never even asks AT&T why it can't present any evidence to show that on traffic only transfers the revenue and time commitment transfer. Judge Wigenton is presented the FCC's 2007 Order and her decision **does not even address it**. That is how confusing her Court found the FCC January 12th 2007 Order. Her Court advised petitioners to file a writ of mandamus requesting the DC Circuit to force the FCC to issue an interpretation on which obligations transfer under section 2.1.8. despite the January 12th 2007 FCC Order stating "The Districts Courts June 2006 Order **does not expand the scope** of the original referral." Instead of Judge Wigenton's Court believing that the FCC actually stated in January 2007 that the Judge Bassler 2006 referred issue is outside the scope of the case. Judge Wigenton's Court **actually believes it is fathomable** for the FCC to simply ignore the DC Circuit and 2006 NJFDC referral---and the FCC has just been **too busy in 11 years to get around to it**.

18) This motion asks new FCC under Chairman Pai to allow the Bureau Level to explicitly advise Judge Wigenton that Judge Bassler's 2006 referral on which obligations transfer is MOOT! Below as are emails between plaintiffs and AT&T's counsel Richard H. Brown who is the head counsel who created the AT&T fraud in 2006 that scammed Judge Bassler; despite having zero evidence to support it. **(EXHIBIT A)**. The subject line is addressed to AT&T's head outside counsel and mastermind of the AT&T intentional fraud initialed on Judge Bassler Mr. Richard Brown. Subject line: **"Richard --show us evidence and I will drop the case."** Mr Brown of course has no evidence because none exists. Mr Brown and Mr Guerra and other AT&T intentionally engaged in a fraud on the NJFDC and was attempted on the FCC in 2006 that was addressed by the Jan 2007 FCC Order as not expanding the scope of the original 1995 referral. What is even more alarming about Mr Brown's behavior is that he was involved in the case from the outset and explicitly advised the Third Circuit Court in 1996 that it was "self-evident under the tariff that the revenue and time commitment do not transfer" on a traffic only transfer only a plan transfer. Imagine having the balls to intentionally scam multiple federal Judges knowing that all the evidence showed Mr Brown and Mr Guerra were scamming the courts and FCC! These attorneys are from 2 of the most respected huge law firms in the USA and yet they were willing to engage in an intentional fraud on the NJFDC and attempted the fraud on the FCC just to keep AT&T cash flowing in. Imagine engaging in this fraud ---with zero evidence---while all the AT&T business executives are claiming their own attorneys **are only lying** to protect AT&T so they don't have to pay. You can't make this up if you tried!!!

19) AT&T counsel attempted to cover up its fraud by misquoting the actual tariff language. Where the tariffs states: the new customer must "assume all obligations of the **former** customer" AT&T misquoted in its briefs the word "**former**" customer to **OLD Plan**. AT&T counsels understood that when traffic only is transferring and not the plan, the customer transferring end-user location traffic is not a FORMER customer on the service (locations or plans) which it does

not transfer—it remains an AT&T customer on the services it doesn't transfer! The customer plan doesn't transfer so obviously, the customer plan commitments don't transfer.

20) So, on a traffic only transfer the transferor is not a **former** AT&T customer it remains an AT&T customer and thus must keep its revenue and time commitments on its plan. This why AT&T has no evidence of its post 2006 fraud---**no evidence exists**. Mr. Brown and Mr Guerra (AT&T's outside counsels Day Pitney and Sidley Austin respectively) understood they were intentionally engaging in a fraud. AT&T in-house counsel also conspired with outside counsel to intentionally scam he NJFDC Judges.

21) Petitioners are filing the Motion to make explicit the FCC Order **at the Bureau Level** from where it was originally released. The FCC Commissioners should not be entertaining any further Decision on which obligations transfer under section 2.1.8 as that was NOT A CONTROVERSY IN 1995! The FCC's only obligation under the Administrative Procedures Act is to **assist the Court** --which it **tried to do** with its FCC Order of January 12th 2007---but the NJFDC still advised petitioners to seek a writ of mandamus to answer the question the FCC said did not expand the scope of the original referral.

22) AT&T has already sent to the FCC its local Washington DC Counsel to personally meet with the Commissioners to beg them to AGAIN Issue a decision in a case that has ALREADY BEEN DECIDED!!! AT&T was advised that these meetings had to be disclosed. Imagine **AT&T would not put in writing its justification for another decision on a moot case---** AT&T counsels incredibly needed to take a trip and personally show up at the FCC in Washington DC ---without petitioners present---to urge the Commissioners to issue another decision!!! Imagine AT&T wants another decision because it lost its sole defense! AT&T was trying to scam the Commissioners in person! **This Commission under Mr. Pai cannot allow AT&T to continue AT&T's intentional fraud that it allowed under Thomas Wheeler.** This Commission under new Chairman Ajit Pai is requested to allow Pam Arluk to make it explicit the Jan 12th 2007 Order on which obligations transfer is moot as it was not a controversy presented to the Commission in 1995. The FCC needs to explicitly advise Judge Wigenton that AT&T's only defense to prohibit a traffic only transfer under either sections 3.3.1.Q bullet 4 or section 2.1.8 was section 2.2.4 fraudulent use and the DC Circuit Court decision is not a remand and it did not find fault with the FCC's decision to deny AT&T's sole defense.

Al Inga President

Group Discounts, Inc.

EXHIBIT A

From: AL [mailto:townnews@optonline.net]
Sent: Monday, December 12, 2016 5:11 PM
To: 'Brown, Richard H.' <rbrown@daypitney.com>; 'ray@grimes4law.com' <ray@grimes4law.com>
Subject: RE: Richard --show us evidence and I will drop the case.

Richard Brown

Thank you for confirming receipt of plaintiff's below emails.

Your former counsel Fred Whitmer during oral argument told Judge Politan that AT&T has an incredible number of traffic only non-plan transfers as evidence. Your position to Judge Bassler the FCC and Judge Wigenton is the revenue and time commitments transfer on a traffic only transfer.

Plaintiffs are willing to walk away from what appears to be **several hundred million in damages** if AT&T simply shows us credible evidence of revenue and time commitments transferring on traffic only transfers.

Where is the evidence of this? There never was an issue over which obligations transfer. You created that new defense in 2005 as AT&T's justification to not process the additional 40% discount on the \$56.6 million in end-user business traffic.

You intentionally engaged in a fraud on the Federal District Court Judges and tried it on the FCC---but the case manager Deena Shetler wrote the Jan 12th 2007 FCC Order confirming that the new 2006 referral from Judge Bassler "did not expand the scope of the original referral that you lost on section 2.2.4.

Just show us the evidence and plaintiffs will withdraw the claims. Former counsel Whitmer said AT&T has massive amounts of evidence of traffic only transfers. Why is it that AT&T can't produce any evidence?

We are waiting for the evidence.

Al Inga President

Group Discounts, Inc.

From: Brown, Richard H. [<mailto:rbrown@daypitney.com>]
Sent: Friday, December 09, 2016 1:21 PM
To: 'AL' <townnews@optonline.net>; ray@grimes4law.com
Cc: ray@grimes4law.com
Subject: RE: Richard --show us evidence and I will drop the case.

I received the 12/8 email.

From: AL [<mailto:townnews@optonline.net>]
Sent: Friday, December 09, 2016 1:11 PM
To: Brown, Richard H.; ray@grimes4law.com
Cc: ray@grimes4law.com
Subject: RE: Richard --show us evidence and I will drop the case.

Ray

Yesterday I asked AT&T counsel Richard Brown to confirm receipt of my below email. Richard Brown not only is refusing to address this issue but is even refusing to confirm receipt!

Please send Mr. Brown this email yourself. I want the Judge Wigenton to see that Mr Brown does not want to address why he has no evidence to support his assertions to Judge Bassler's Court and Judge Wigenton's Court. I also want to upload it to the FCC server.

Ray...Maybe Mr Brown will confirm receipt of your emails.

Al Inga President

Group Discounts, Inc.

From: AL [<mailto:townnews@optonline.net>]
Sent: Thursday, December 08, 2016 1:11 PM
To: Brown, Richard <rbrown@daypitney.com>; ray@grimes4law.com
Subject: Richard --show us evidence and I will drop the case

Richard Brown

Please confirm receipt.

As you are aware there was no controversy in January 1995 regarding which obligations transferred under 2.1.8 on a traffic only transfer. All parties agreed that the non-transferred plans revenue and time commitment remains with the non-transferred plan. As you are aware you stated to the Third Circuit Court that it was “self-evident” that under the tariff these customer obligations don’t transfer on a traffic only transfer.

The only controversy in 1995 was whether AT&T could use section 2.2.4 fraudulent use to prohibit a permissible 2.1.8 traffic only transfer. AT&T’s sole defense was that petitioners were not going to be able to meet its revenue commitment because under the tariff if the great majority of the traffic was transferred but the revenue commitment remained with the non-transferred plan, there would be no way to meet the revenue commitment. AT&T made its sole fraudulent use argument despite the fact that the intended traffic only transfer was going to be a temporary transfer and petitioners had already met fiscal year commitments.

In any event by March 1996 the District Court Judge Politan issued an injunction because he determined that there was nothing in the tariff that prohibited the traffic only transfer and again noted that petitioners plans were all pre June 17th 1994 issued and thus immune from shortfall and termination charges as petitioners had the ability to avoid the revenue commitment by simply restructuring its commitment further out in time. Because AT&T’s speculation that petitioners were going to certainly have shortfall had no merit and “was not properly substantiated by AT&T” Judge Politan issued the injunction.

We are all aware that the DC Circuit Court Judge Roberts was confused as to which obligations transfer under 2.1.8 on a traffic only transfer even though the DC Circuit’s job was **only to review what the FCC was tasked to interpret**—fraudulent use (section 2.2.4). Even though AT&T’s counsel David Carpenter tried several times during oral argument to explain what obligations transfer depends upon what is transferred, Judge Roberts was still confused.

Judge Roberts also decided that not only should overstep his bounds by reviewing what the FCC did not interpret, Judge Roberts misread the obligations language of the section 2.1.8 believing the language was transferor and not “former customer.” Of course, PSE under 2.1.8 was only obligated to assume all obligations of the **former** customer. Obviously on a traffic only-non plan transfer the revenue and time commitment don’t transfer as you and AT&T counsels Meade,

Carpenter, and Whitmer stated in Jan 1995. The customer is only a former customer on that which it transfers. The plan didn't transfer and thus the obligations on the plan don't transfer.

As you are aware Judge Roberts was confused even though the oral argument shows that the other two DC Circuit Judges Ginsburg and Tatel understood the revenue commitment does not transfer on a traffic only transfer. Unfortunately Judge Roberts wrote the DC Circuit Decision. Judge Roberts incredibly overlooked all the actual evidence in the case showing all previous traffic only transfers never had the revenue and time commitments transfer. AT&T's basic defense was predicated on the tarified fact that customer obligations don't transfer and plaintiffs remained a customer as the plan was not transferred!

Judge Roberts did not have an issue with the FCC deciding against AT&T's sole defense of fraudulent use and thus the case was over and should have gone to damages at that point.

In 2005 Judge Bassler took over for Judge Politan and you and Joey Guerra decided that despite having argued that plan obligations don't transfer you would jump all Judge Roberts confusion on an item outside his reviewing authority and cease the opportunity to create a brand new defense that all obligations transfer on a traffic only transfer.

You obviously knew that there has never been a traffic only transfer in the history of AT&T in which the revenue and the time commitment transfer on a traffic only transfer----yet you were willing to intentionally engage in a fraud on Judge Bassler, despite not having any evidence to back up your 180-degree reversal of which obligations transfer. Where previously in 1995 there was never a controversy as to which obligations transfer, you created a new controversy in 2005. Based upon your intentional misrepresentations to the Judge Bassler he issued a new primary jurisdiction referral to the FCC in December of 1996.

Deena Shetler wrote the Jan 12th 2007 FCC Order and corrected stated that Judge Bassler's question on which obligations transfer under section 2.1.8 "did not expand the scope" of the original 1996 primary jurisdiction referral which was on fraudulent use. Deena clearly understood that AT&T counsel intentionally misled Judge Bassler and was able to do so for a couple of reasons:

A) At the time the tariff analysis of "former customer" was not presented to Judge Bassler as AT&T's briefs kept misquoting the tariff language as "the transferor" and "the Old plan" instead of the actual tariff language of:

"all obligations of the **FORMER** customer."

B) AT&T used Judge Roberts credibility to engage in the fraud. Yes, we all know now that Judge Roberts was confused on a matter outside his limitations to review. You ceased that opportunity to use his confusion.

You intentionally engaged in a fraud on Judge Bassler that you tried to pull on the FCC and Deena within weeks of the new Bassler referral coming in killed it as outside the scope. You continued the intentional fraud on Judge Wigenton.

Judge Wigenton did not understand what “does not expand the scope” means in the Jan12th 2007 FCC Order. Judge Wigenton believes that the FCC just has not had the opportunity to interpret this “which obligations transfer” question since 2006. Judge Wigenton suggested that petitioners seek a writ of mandamus at the DC Circuit to force the FCC to interpret a question that was never before the FCC and DC Circuit. The DC Circuit legal director Martha Tomich pointed out the DC Circuit Decision explicitly stated that the DC Circuit Court can only address the original 2.2.4 controversy. There was no controversy as to which obligations transfer.

AT&T counsel Whitmer told Judge Politan in 1995 that there are literally thousands of traffic only transfers that AT&T has done. That’s 1995! AT&T continues to transfer only accounts as there are always mergers and acquisitions and sell-offs. The most amazing thing is that AT&T has been able to pull off the fraud since 2005 without any evidence!!! If there were traffic only transfers in which the revenue and time commitments transfer, then AT&T would have simply shown the evidence to Judge Bassler and Judge Wigenton and says: Here Judge look at all this evidence! But AT&T can’t because no evidence exists. AT&T’s own account executives in writing have said AT&T counsels know they are lying.

Here is the bottom-line....

If AT&T produces credible evidence of revenue and time commitments transferring on a traffic only transfers, under either sections 2.1.8 or 3.3.1Q bullet 4 (delete and add), petitioners will drop its case---even though the case has already been won!

Sincerely,

Al Inga President

Group Discounts, Inc